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Preface

This publication is one in a series of monthly pamphlets entitled "Digests of Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and Accounting Act, 1921. A disbursing or certifying official or the head of an agency may request a decision from the Comptroller General pursuant to 31 U.S. Code § 3529 (formerly 31 U.S.C. §§ 74 and 82d). Decisions concerning claims are issued in accordance with 31 U.S. Code § 3702 (formerly 31 U.S.C. § 71). Decisions on the validity of contract awards are rendered pursuant to the Competition in Contracting Act, Pub. L. 98-369, July 18, 1984. Decisions in this pamphlet are presented in digest form. When requesting individual copies of these decisions, which are available in full text, cite them by the file number and date, e.g., B-229329.2, Sept. 29, 1989. Approximately 10 percent of GAO's decisions are published in full text as the Decisions of the Comptroller General of the United States. Copies of these decisions are available in individual copies, in monthly pamphlets and in annual volumes. Decisions in these volumes should be cited by volume, page number and year issued, e.g., 68 Comp. Gen. 644 (1989).

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Appropriations/Financial Management

B-241085, October 4, 1990***

Appropriations/Financial Management

Accountable Officers

- Disbursing officers
- ■ Substitute checks
- ■ ■ Issuance
- ■ ■ ■ Authority

The Navy has authority to waive its requirement to obtain written statements of nonreceipt from check payees before issuing successor checks. The delay in waiting for such statements will likely cause financial hardship to allotment payees. Therefore, under the circumstances in this case, a Navy Disbursing Officer's issuance of successor checks without first obtaining signed statement from original checks payees is not evidence of a lack of due care.

Appropriations/Financial Management

Accountable Officers

- Disbursing officers
- ■ Relief
- ■ ■ Illegal/improper payments
- ■ ■ ■ Substitute checks

When an accountable officer is issuing 4,671 replacement checks because the original checks were lost in a bulk shipment, it is premature to request relief, in advance, for any loss due to payment of both original and substitute checks. First, we cannot grant relief until a loss occurs. Second, any loss might be recovered by collection action or through a claim under the Government Losses in Shipment Act. A loss must occur and the factual record must be complete before we will address relieving liability.

B-240671, October 5, 1990***

Appropriations/Financial Management

Accountable Officers

- Cashiers
- ■ Relief
- ■ ■ Physical losses
- ■ ■ ■ Theft

Relief for the physical loss of funds due to theft is denied imprest fund cashier under 31 U.S.C. § 3527(a) (1988). The cashier failed to follow regulations requiring that the safe combination and key be stored in a secure manner, and thus was negligent. The evidence does not support a determination that the cashier's negligence did not contribute to the theft.

B-236040, October 9, 1990***

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Necessary expenses rule
- ■ ■ Awards/honoraria

Employees attending regional awards ceremony sponsored by the local Federal Executive Board may be reimbursed the cost of the luncheon and related expenses under the Incentive Awards Act.

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Meals

Employees attending regional awards ceremony sponsored by the local Federal Executive Board may be reimbursed the cost of the luncheon and related expenses under the Incentive Awards Act.

B-239724, October 11, 1990

Appropriations/Financial Management

Accountable Officers

- Cashiers
- ■ Relief
- ■ ■ Physical losses
- ■ ■ ■ Counterfeit bills

Cashier is relieved of liability for physical loss of \$1,000 due to his acceptance of ten counterfeit \$100 notes. Loss occurred without fault or negligence of the accountable officer. However, GAO cannot authorize charging the appropriate account with the loss since an accountable officer in Beirut, Lebanon, is potentially liable for the loss and the required administrative findings have not been submitted.

B-239556, October 12, 1990

Appropriations/Financial Management

Judgment Payments

- Permanent/indefinite appropriation
- ■ Availability

Consistent with 44 Comp. Gen. 312 (1964), in order to avoid defeating the purposes to be served by such awards, payment may not be made from the Judgment Fund, 31 U.S.C. § 1304 (1988), for (a) criminal contempt fines intended to punish defiance of the courts and vindicate their authority, or (b) civil contempt fines intended to compel future compliance with court orders. However, payment from that fund is not precluded for (c) civil contempt awards intended to compensate plaintiffs for losses arising from defendants' failure to comply with court orders.

Appropriations/Financial Management

Judgment Payments

- Attorney fees

The Judgment Fund, 31 U.S.C. § 1304 (1988), may be used to pay judicial awards of attorney fees and costs in civil contempt proceedings because these awards, unlike those which were the subject of 44 Comp. Gen. 312, 314 (1964), are compensative in nature, and payment from that fund would not defeat the court's purposes in making such awards.

B-240271, October 15, 1990

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Personal expenses/furnishings

The Internal Revenue Service may use appropriated funds to purchase a motorized wheelchair for a disabled employee. Our Office would agree with a determination that the powered wheelchair is needed to perform employee's official duties and that such an action would constitute a "reasonable accommodation" in accordance with standards set forth in 29 C.F.R. 1613.704, and with the understanding that the wheelchair would be the property of the United States Government.

B-240994, October 15, 1990

Appropriations/Financial Management

Claims Against Government

- Unauthorized contracts
- ■ Quantum meruit/valebant doctrine

An unratifiable claim by a private security company for reimbursement for temporary, emergency security guard services obtained without completion of proper procurement procedures may be paid by the United States Marshals Service under the principles of *quantum meruit*.

B-236232, October 25, 1990

Appropriations/Financial Management

Appropriation Availability

- Purpose availability
- ■ Specific purpose restrictions
- ■ ■ Telephones

Reimbursement of a member's expenses for payment of monthly service charges on a dedicated telephone line over which a Navy-supplied fax machine operated is not prohibited by 31 U.S.C. § 1348(a)(1), even though the machine was installed in the member's civilian business office, since the statute only precludes government payment for telephone service from a private residence.

B-238581, October 31, 1990

Appropriations/Financial Management

Obligation

- Payments
- ■ Termination costs
- ■ ■ Contingent liability

In agreeing to a "special termination" clause, the Air Force effected an obligation of \$13.5 million. The "special termination" liability is not a contingent liability, as the Air Force argues; the Air Force committed itself to pay \$13.5 million in termination costs without having committed additional funds to continue operations.

Appropriations/Financial Management

Obligation

■ Congressional notification

The Air Force's January 24 letter to the Congress indicating its plans to use \$418 million for the Core program satisfies the notification requirements of section 9071 of Pub. L. No. 101-165, 103 Stat. 1112, 1145 (1989).

Appropriations/Financial Management

Obligation

■ Expenditure recording

■ ■ Termination costs

■ ■ ■ Contingent liability

The Air Force, in accordance with 31 U.S.C. § 1501, should have recorded \$13.5 million in "special termination" liability as an obligation on January 31.

Civilian Personnel

B-238300, October 4, 1990

Civilian Personnel

Relocation

- Temporary quarters
- ■ Actual subsistence expenses
- ■ ■ Eligibility
- ■ ■ ■ Extension

A transferred employee, while occupying temporary quarters, contracted to purchase a townhouse to be constructed which was not scheduled for completion until several months beyond the initial 60-day period granted by the agency for temporary quarters occupancy. A low appraisal caused a further delay. The agency's policy guideline authorizes an extension beyond 60 days only if the delay in construction or other circumstances are short-term and occur during the initial 60 days of temporary quarters occupancy. Since that was not the case here, the agency's denial of an extension beyond 60 days is sustained.

B-238601, October 4, 1990

Civilian Personnel

Relocation

- Temporary quarters
- ■ Actual subsistence expenses
- ■ ■ Eligibility
- ■ ■ ■ Extension

Employee requested an extension of temporary quarters subsistence expenses of 54 days beyond the initial 60-day period authorized by the agency. The agency allowed an additional 30 days based upon the employee's diligent efforts to successfully execute a contract for permanent housing without the benefit of a househunting trip, and the agency's knowledge of excessive housing prices in the New York City, New York, area, but denied reimbursement for the remaining 24 days requested. Based on the facts of record, the denial of the final 24 days of temporary quarters occupancy was not arbitrary or an abuse of discretion. The employee is not entitled to reimbursement of the expenses incurred during the remaining 24 days of temporary quarters occupancy.

B-239341, October 5, 1990

Civilian Personnel

Relocation

- Actual expenses
 - ■ Eligibility
 - ■ ■ Distance determination
-

Civilian Personnel

Relocation

- Household goods
- ■ Shipment
- ■ ■ Reimbursement
- ■ ■ ■ Eligibility

This summary letter decision addresses well established rules which have been discussed in previous Comptroller General decisions. To locate substantive decisions addressing this issue, refer to decisions indexed under the above listed index entry.

B-240556, October 9, 1990

Civilian Personnel

Compensation

- Overpayments
- ■ Error detection
- ■ ■ Debt collection
- ■ ■ ■ Waiver

Subsequent to an employee's transfer, his salary was erroneously continued and he received two payments with accompanying Leave and Earnings Statements (LES) from his former agency for a time period he was employed by and received pay from his new agency. The employee indicated that someone told him he might be entitled to severance pay and he therefore assumed the payments were such pay. However, the continued receipt of regular salary payments and the LES' should have alerted him to the strong possibility that the payments were erroneous. Since he took no corrective action, he must be considered at least partially at fault, and waiver of his debt is denied.

B-239343, October 11, 1990

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Loan origination fees
- ■ ■ Reimbursement

Transferred employee purchased a residence at new duty station and has furnished a statement by the lender itemizing the charges covered by the claimed 2 percent loan origination fee, along with a statement from the lender that the administrative charges do not include mortgage points or interest. The additional claimed 1 percent loan origination fee (1 percent was previously paid by agency) charged by the lender may not be paid since the listing does not represent clear and convincing evidence as to the identity of the expenses actually incurred by the lender in arriving at the 2 percent (\$3,200) loan origination fee. Further, the statement by the lender that the 2 percent loan origination fee represents the rate customarily charged in the locality of the residence, standing alone, is insufficient to establish the accuracy of that rate.

B-239615, October 11, 1990

Civilian Personnel

Travel

- Temporary duty
- ■ Lodging
- ■ ■ Leases

An association of extended-stay lodging facilities requested the General Accounting Office to investigate a practice in which certain agencies lease quarters for use by their employees while on temporary duty. We note that generally agencies may lease rooms under such circumstances provided that appropriated funds are not used in excess of the maximum per diem rate or actual expenses allowed for the particular area. We advise the association to consider GAO's Bid Protest Procedures for questions relating to procurement matters, and GAO's general claims procedures for questions relating to employees' travel claims.

B-239225, October 12, 1990

Civilian Personnel

Travel

- Permanent duty stations
- ■ Actual subsistence expenses
- ■ ■ Prohibition

Civilian Personnel

Travel

- Temporary duty
- ■ Per diem
- ■ ■ Eligibility

An employee who incident to moving his family residence to a training site forfeits his right to per diem at the site is entitled to transportation costs and per diem when required to travel on temporary duty to the location which would otherwise be his official duty station. For the purposes of section 301-7.4(a) of the Federal Travel Regulations, which prohibits the payment of per diem at a permanent duty station, the training site may be considered the employee's duty station.

B-237624, October 17, 1990

Civilian Personnel

Compensation

- Retroactive compensation
- ■ Interest

Director, Department of Veterans Affairs Domiciliary, White City, Oregon, is advised that we agree with the Department's General Counsel's conclusion that its employees are entitled to interest on EDP claims under the Back Pay Act, 5 U.S.C. § 5596(b) (1988). There is no authority outside of the Back Pay Act for retroactive payment of claims. Thus, the employees would be entitled to interest under the Act notwithstanding the fact that they signed "administrative settlements" which did not provide for such payment.

B-239660, October 17, 1990

Civilian Personnel

Compensation

- Overpayments
 - ■ Error detection
 - ■ ■ Debt collection
 - ■ ■ ■ Waiver
-

Civilian Personnel

Leaves Of Absence

- Lump-sum payments
- ■ Reinstatement
- ■ ■ Retroactive compensation
- ■ ■ ■ Set-off

Claims Group settlement denying waiver is sustained on the basis of the net indebtedness rule since deduction of lump-sum payments from an employee's backpay award did not result in a net indebtedness to the government.

B-238766, October 18, 1990

Civilian Personnel

Compensation

- Payroll deductions
- ■ Life insurance
- ■ ■ Insurance premiums
- ■ ■ ■ Underdeductions

Upon appointment, employee signed a life insurance election form for Federal Employees' Group Life Insurance (FEGLI) coverage. Deductions for FEGLI premiums were taken from her salary for over 1 year and were discontinued due to administrative error. Since we do not have the employee's leave and earnings statements showing the deductions for FEGLI premiums and the subsequent discontinuance of such deductions from her salary, we cannot determine whether a reasonable and prudent person would have made inquiry as to the reason for the discontinuance of the deductions, and therefore whether the employee's failure to do so constituted fault on her part. The case is remanded to the agency to determine whether the employee was at fault for not making inquiry.

B-235978, October 26, 1990

Civilian Personnel

Relocation

- Residence transaction expenses
 - ■ Attorney fees
 - ■ ■ Contract cancellation
-

Civilian Personnel

Relocation

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Contract cancellation
- ■ ■ ■ Personnel death

A transferred employee who had contracted to sell his residence at his old duty station and to purchase a residence at his new duty station died unexpectedly before either transaction was completed. His widow incurred expenses of \$20,500 to obtain releases from the contracts of sale and

purchase, plus an attorney's fee. She may be reimbursed her expenses, including a reasonable attorney's fee, not to exceed the amount that would have been reimbursed had she completed the relocation to her deceased husband's new duty station.

B-240239, October 29, 1990

Civilian Personnel

Compensation**■ Retroactive compensation****■ ■ Eligibility**

Although at the direction of their unit chief FBI firearms instructors performed duties of a position classified at a higher grade than the position they occupied, no right to increased pay exists. A federal employee is entitled only to the salary of his appointed position even though higher level duties were performed. Therefore, the employees are not entitled to backpay for performing the higher-graded duties.

B-239754, October 30, 1990

Civilian Personnel

Compensation**■ Compensation retention****■ ■ Administrative Regulations**

An employee, who exercised his reemployment rights under 10 U.S.C. § 1586 (1988) and returned from overseas to his prior place of employment, is not entitled to have his basic pay recomputed to include the 10 percent night differential he received prior to his overseas assignment. Since his position was abolished in a reorganization during his overseas tour, his entitlement upon his return was properly determined under grade and pay retention regulations as if he had never left his position. Those regulations exclude night differential from basic pay.

Military Personnel

B-237783, October 1, 1990***

Military Personnel

Pay

■ Set-off

■ ■ Military leave

Where a statute specifically refers by section number to another statute, they are interpreted as of the time of adoption, without subsequent amendments, in the absence of a contrary legislative intent. Therefore, under the current code, the salary offset provision in 5 U.S.C. § 5519 (1988) applies to amounts received by reservists and national guardsmen while on military leave to enforce the law under 5 U.S.C. § 6323(b) (1988), but salary offset does not apply to leave under 5 U.S.C. § 6323(c) (1988) for District of Columbia National Guardsmen ordered or authorized to serve in parades or encampments even though section 5519 literally refers to section 6323(c).

B-240339, October 12, 1990

Military Personnel

Pay

■ Overpayments

■ ■ Error detection

■ ■ ■ Debt collection

■ ■ ■ ■ Waiver

A former service member's debt due to the erroneous issuance of an allotment check to his spouse subsequent to his separation may not be waived where the former member, apparently living with his spouse at that time, should have known of the payment and that it was erroneous but failed to notify appropriate officials.

B-238463, October 15, 1990***

Military Personnel

Pay

■ Survivor benefits

■ ■ Annuities

■ ■ ■ Eligibility

■ ■ ■ ■ Illegitimate children

Claims for Survivor Benefit Plan annuities submitted by the mothers of illegitimate children of two deceased retired service members are denied because neither child lived with her father in a regular parent-child relationship, as required by 10 U.S.C. § 1447(5).

B-230865, October 17, 1990

Military Personnel

Pay

- Retirement pay
- ■ Judgment debtors
- ■ ■ Debt collection
- ■ ■ ■ Set-off

Authority in section 124 of Public Law No. 97-276 for collection of judgment debt by administrative offset from current pay of indebted federal employees does not permit offset of judgment debt from the monthly retired pay of members of the armed forces. Such collection by offset instead must be effected pursuant to the authority and procedures in 5 U.S.C. § 5514.

Military Personnel

Pay

- Retirement pay
- ■ Judgment debtors
- ■ ■ Debt collection
- ■ ■ ■ Set-off

Amount set off from military retired pay pursuant to the apparent authority of section 124 of Public Law No. 97-276 toward satisfaction of judgment debt of retired service member need not be refunded based on otherwise unrelated court decision, issued after offset was initiated, that section 124 generally does not apply to military personnel, since authority for offset clearly existed in another statute, 5 U.S.C. § 5514.

B-240780, October 17, 1990

Military Personnel

Pay

- Survivor benefits
- ■ Annuities
- ■ ■ Set-off
- ■ ■ ■ Social security

Offset of amount from annuity payable under the Survivor Benefit Plan, 10 U.S.C. § 1447 *et seq.* representing Social Security payable to a widow at age 62 must be calculated on the basis of wages attributable to military service only, and a formula used to calculate wages attributable to the military service may not include wages from non-military employment.

B-230380, October 23, 1990***

Military Personnel

Travel

- Bonuses
- ■ Acceptance
- ■ ■ Propriety
- ■ ■ ■ Dependents

Dependent students of a military member may retain nontransferable travel certificates received from an airline as a result of a 24-hour flight delay. General rule that discount coupons and other benefits received in the course of official travel are the property of the government does not apply in the case of benefits received by dependents of government employees or military members whose travel is paid for by the government but who are not eligible for per diem payments.

B-236232, October 25, 1990

Military Personnel

Pay

■ Pay restrictions

■ ■ Off-site work

■ ■ ■ Utility services

■ ■ ■ ■ Reimbursement

Reimbursement of a member's expenses for payment of monthly service charges on a dedicated telephone line over which a Navy-supplied fax machine operated is not prohibited by 31 U.S.C. § 1348(a)(1), even though the machine was installed in the member's civilian business office, since the statute only precludes government payment for telephone service from a private residence.

Miscellaneous Topics

B-226269, October 3, 1990

Miscellaneous Topics

Agriculture

- Agricultural programs
- ■ Exports
- ■ ■ Conflicts of interest

The Foreign Agricultural Service's conflict of interest regulations dealing with the activities of participants in the foreign market development programs, do not prohibit an association which is acting on behalf of and which is a member of a cooperator-association, from engaging in commercial export-related activities of the same commodity through a wholly owned subsidiary.

B-238419, October 9, 1990***

Miscellaneous Topics

Environment/Energy/Natural Resources

- Regulatory agencies
- ■ Authority
- ■ ■ Civil penalties
- ■ ■ ■ Mitigation

The Nuclear Regulatory Commission (NRC) lacks authority to permit licensees who violate NRC requirements to fund nuclear safety research projects in lieu of paying monetary civil penalties. See 42 U.S.C. § 2282(a).

Procurement

B-238669.2, October 1, 1990

90-2 CPD 260

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Agency reasonably selected technically superior, higher priced proposal for X-ray scanner maintenance where agency found awardee's proposed repair personnel and parts accessibility superior to protester's.

B-239790, October 1, 1990

90-2 CPD 261

Procurement

Competitive Negotiation

- Offers
- ■ Options
- ■ ■ Price disclosure

Agency disclosure of incumbent contractor's option unit prices for freezer storage services in a solicitation to determine whether it is most advantageous to the government to exercise an option was not improper even though these prices were submitted in a restricted cost proposal since the prices, incorporated in the contract, were not shown to be confidential, proprietary data.

B-239893, B-239894, October 1, 1990

90-2 CPD 262

Procurement

Socio-Economic Policies

- Small business 8(a) subcontracting
- ■ Use
- ■ ■ Administrative discretion

A challenge to the placement of procurements under the Small Business Administration's 8(a) program based on alleged bad faith on the part of the contracting agency will be upheld only if the facts indicate that the government actions complained of were improperly motivated.

Procurement

Socio-Economic Policies

- Small business 8(a) subcontracting
- ■ Use
- ■ ■ Administrative discretion

The Small Business Administration was not required to conduct an adverse impact analysis before accepting proposed procurements for 8(a) awards where requirements were previously accepted for the 8(a) program and would continue to be performed by 8(a) firms within the 8(a) program.

Procurement

Socio-Economic Policies

- Small businesses 8(a) subcontracting
- ■ Multiple/aggregate awards
- ■ ■ Resolicitation

Contracting agency which previously included multiple requirements under a single 8(a) contract may subsequently break out these same requirements for separate 8(a) firms to perform if a valid reason exists to do so.

B-239973.3, B-230998, October 1, 1990

90-2 CPD 263

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule
- ■ ■ ■ Adverse agency actions

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Shipment modes

Protests to the General Accounting Office filed more than 10 working days after notice of initial adverse agency action on protester's agency-level protests are untimely.

B-241185, October 1, 1990

90-2 CPD 264

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Terms
- ■ ■ ■ Deviation

Procuring agency properly rejected protester's bid as nonresponsive where the protester's statement in its bid that the solicitation's required performance schedule was "impossible" created uncertainty as to whether the bidder intended to comply with the solicitation's completion schedule.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Protest allegation that the solicitation's required performance schedule is impossible concerns an apparent solicitation impropriety which was untimely protested after bid opening.

Procurement

Sealed Bidding

- Bid guarantees
- ■ Sureties
- ■ ■ Acceptability

Contracting officer's rejection of individual sureties as unacceptable was reasonable where attempts to verify the statement of assets of each surety were unsuccessful and certificates of sufficiency, contained in each surety's affidavit of Individual Surety were questionable, casting further doubt on the accuracy of the information provided by the sureties.

Procurement

Socio-Economic Policies

- Small business set-asides
- ■ Use
- ■ ■ Justification

Agency determination that procurements of beef for commissary stores should not be set aside exclusively for small business participation was reasonable where contracting officer did not have a reasonable expectation of receiving offers from two responsible small business concerns at reasonable prices because the solicitations contain requirements for multiple weekly deliveries to remote locations in Hawaii, for 24-hour product replacement and for local representatives, requirements which render performance cost prohibitive for firms without pre-existing large distribution systems in Hawaii.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

Protest that agency failed to evaluate awardee's reduction in level of manning from that proposed is denied where there is no evidence that awardee misrepresented in its proposal its intended level of manning and the record indicates that reduction to a level no less than that proposed by protester (which agency evaluated as acceptable) would not have materially altered the evaluation of the awardee's proposal.

Procurement

Contractor Qualification

- Approved sources
- ■ Alternatives
- ■ ■ First-article testing

Protest is sustained where agency refused to consider qualifying the protester as an approved source for aircraft fuel cells on the basis of the firm having supplied cells for similar aircraft in the past in lieu of passing a 300-hour flight test, because the record indicates that qualification by similarity may have been used in other cases and agency has offered no rational explanation for its decision to forego such a procedure here.

Procurement

Bid Protests

- GAO procedures
 - ■ GAO decisions
 - ■ ■ Reconsideration
-

Procurement

Bid Protests

- GAO procedures
 - ■ Protest timeliness
 - ■ ■ Apparent solicitation improprieties
-

Protest against a geographic restriction is untimely filed after bid opening, where that restriction is apparent from the face of the solicitation.

Procurement

Sealed Bidding

- Bid guarantees
 - ■ Responsiveness
 - ■ ■ Signatures
 - ■ ■ ■ Sureties
-

The validity of a bid bond that does not include the signature of the surety's attorney-in-fact is sufficiently questionable to warrant rejection of the bid as nonresponsive.

Procurement

Competitive Negotiation

- Requests for proposals
 - ■ Competition rights
 - ■ ■ Contractors
 - ■ ■ ■ Exclusion
-

Protest by incumbent contractor challenging its exclusion from a limited competition for an interim contract for waste collection and disposal services is sustained where contracting agency failed to obtain maximum practicable competition by not inviting protester to respond to solicitation on the basis that the solicitation required submission of supporting cost data with proposals and protester had been unwilling to provide such data when offered an extension to its then-current contract to cover these services. The agency's exclusion of the contractor on this basis is unreasonable since such data would not have been required if adequate price competition were achieved.

Procurement

Small Purchase Method

- Quotations
 - ■ Contract awards
 - ■ ■ Cost/technical tradeoffs
 - ■ ■ ■ Technical superiority
-

Award to higher priced, higher rated offeror is proper where awardee's higher combined technical/price score reasonably reflected its superiority with respect to the demonstrated prior

performance of equipment to be used for state-of-the-art research, the single most significant evaluation criterion.

B-239905, October 9, 1990

90-2 CPD 273

Procurement

Contractor Qualification

- Approved sources
- ■ Pre-qualification
- ■ ■ Justification

Protest that pre-award source approval was not required and thus that agency improperly rejected protester's proposal because protester was not an approved source is denied where the solicitation clearly contemplates that the award would be made to an approved source.

Procurement

Noncompetitive Negotiation

- Use
- ■ Justification
- ■ ■ Urgent needs

Protest that agency improperly rejected protester's proposal because protester was not an approved source is denied where the agency's needs became urgent and the agency reasonably determined that it could not delay the procurement until the protester received source approval.

B-241161, October 9, 1990

90-2 CPD 274

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Acceptance time periods
- ■ ■ ■ Deviation

Where a bid offers a minimum bid acceptance period of 10 days in response to a sealed bid solicitation requiring 60 days, the bid is nonresponsive and may not be corrected after bid opening, since the minimum bid acceptance period is a material requirement of the solicitation which must be complied with at bid opening.

Procurement

Sealed Bidding

- Bids
- ■ Clerical errors
- ■ ■ Error correction
- ■ ■ ■ Propriety

A nonresponsive bid must be rejected and may not be changed or corrected based on explanations offered by the bidder after bid opening; the importance of maintaining the integrity of the competitive bidding system outweighs the possibility that the government might realize monetary savings if a material deficiency in a bid is corrected or waived.

Procurement

Contract Management

- Contract modification
- ■ Cardinal change doctrine
- ■ ■ Criteria
- ■ ■ ■ Determination

Protest that contract modifications to research and development contract for electrolytic chlorine generator system for disinfecting water are beyond the scope of the contract is denied where there is no significant change in the purpose and nature of the contract and obligation of either party to the contract.

Procurement

Competitive Negotiation

- Unbalanced offers
- ■ Materiality
- ■ ■ Determination
- ■ ■ ■ Criteria

Awardee's offer for base and option quantities is not materially unbalanced when the awardee's prices are lower than protester's for the basic quantity and any quantities of options that could be awarded under the solicitation.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Administrative discretion

Normalization procedure used by contracting agency to evaluate two versions of night vision device was fair and reasonable where the purpose of the normalization was to avoid a situation where proposal of device that lacked additional features desired by agency would have been rated equal to a proposal of device which included the additional features.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties
- ■ ■ Direct interest standards

Protester whose proposal was properly eliminated from the competitive range is not an interested party to challenge whether the proposed awardee's proposal may be accepted where other acceptable proposal would be in line for award if the protest were sustained.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Administrative discretion

Procuring officials enjoy a reasonable degree of discretion in evaluating proposals for campground concessionaire operations, and General Accounting Office will not disturb an evaluation where the record supports the conclusions reached and the evaluation is consistent with the criteria set forth in the prospectus.

Procurement

Bid Protests

- Bias allegation
- ■ Allegation substantiation
- ■ ■ Evidence sufficiency

Protest that agency was biased in favor of the awardee in its evaluation of proposals for campground concessionaire operations is denied where there is no credible evidence showing bias, and the record supports the selection of the awardee.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Evaluation criteria
- ■ ■ Sample evaluation
- ■ ■ ■ Testing

Agency properly rejected proposal as technically unacceptable and outside competitive range where protester failed to submit bid samples which were necessary to evaluate cost and to establish technical acceptability of offer.

Procurement

Contract Management

- Contract modification
- ■ Cardinal change doctrine
- ■ ■ Criteria
- ■ ■ ■ Determination

Procurement

Special Procurement Methods/Categories

- Service contracts
- ■ Telecommunications

Requirement for long-distance telephone service for federal inmates comes within the scope of the FTS2000 telecommunications services contracts. Where the long distance service does not differ in any technical respect from that being provided under the FTS2000 contracts, the contracts specifically provide for additional users, and the contracts cover telephone services related to official government business, including telephone calls by inmates.

Procurement

Contract Management

- Contract modification
- ■ Cardinal change doctrine
- ■ ■ Criteria
- ■ ■ ■ Determination

Where agency requirement for long-distance telephone service for federal inmates comes within the scope of the FTS2000 telecommunications services contracts, agency is required to place orders for the service under the FTS2000 contract in the absence of an exception granted by the General Services Administration and such orders will not constitute improper sole-source procurements.

B-241005, October 11, 1990

90-2 CPD 281

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

Letter to agency stating future intent to submit a protest concerning the agency's rejection of bid as nonresponsive does not constitute a protest and subsequent protest filed with the General Accounting Office more than 10 working days after the basis for protest was known is dismissed as untimely.

B-239795.2, October 12, 1990

90-2 CPD 282

Procurement

Sealed Bidding

- Contract awards
- ■ Propriety

Failure of two lower bidders to satisfy small business size standard referenced in the solicitation was not a basis for rejecting those bids where neither the solicitation nor the *Commerce Business Daily* synopsis contained language indicating that the procurement was set aside for small businesses, and the agency never intended a set-aside.

B-239938, October 12, 1990

90-2 CPD 283

Procurement

Socio-Economic Policies

- Small businesses
- ■ Responsibility
- ■ ■ Negative determination
- ■ ■ ■ Reconsideration

Protest that the contracting agency improperly failed to reconsider nonresponsibility determination in light of new information submitted by a third party to the contracting officer before award, but after Small Business Administration declined to issue certificate of competency, is denied where record indicates that the contracting agency did consider the evidence presented and reasonably determined that reversal of the nonresponsibility determination was not warranted.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties
- ■ ■ Direct interest standards

Where bidder properly was found nonresponsible, its protest challenging cancellation of solicitation is dismissed, since firm would not be in line for award if the protest were sustained, and thus is not an interested party under General Accounting Office Bid Protest Regulations.

B-239942, October 12, 1990

90-2 CPD 284

Procurement

Competitive Negotiation

- Unbalanced offers
- ■ Materiality
- ■ ■ Determination
- ■ ■ ■ Criteria

Procurement

Competitive Negotiation

- Unbalanced offers
- ■ Rejection
- ■ ■ Propriety

The apparent low offer on a contract for a base period and 3 option periods was properly rejected as materially unbalanced where there is a large price differential between the base and option periods, the bid does not become low until almost 90 percent of the option quantities have been acquired, and the solicitation indicates there is uncertainty as to exercise of the options due to funding constraints, because there is reasonable doubt that acceptance of the offer ultimately will result in the lowest overall cost to the government.

B-239948, October 12, 1990

90-2 CPD 285

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety

Award of lease for office space to higher-priced offeror is proper where solicitation provides for consideration of environmental factors and the contracting agency reasonably determined that protester's proposed site may pose safety problems for agency employees and clients.

B-239952, October 12, 1990

90-2 CPD 286

Procurement

Sealed Bidding

- Invitations for bids
- ■ Terms
- ■ ■ Risks

Protest that maintenance dredging solicitation requesting a lump sum price instead of unit prices for government estimated quantities places too much risk on the contractor and results in bidders not bidding on an equal basis is denied, where the record shows the method of contracting chosen by the agency significantly reduces the agency's administrative burden and bidders can reasonably estimate the project cost given the availability of historical data and the apparent nature of the risks.

Procurement

Socio-Economic Policies

- Preferred products/services
- ■ Domestic products
- ■ ■ Compliance

Where contracting officer had information available which indicated that an offeror would provide a domestic end product, the contracting officer properly relied on the offeror's self-certification that a domestic end product would be furnished.

Procurement

Contract Management

- Contract administration
- ■ Domestic products
- ■ ■ Compliance
- ■ ■ ■ GAO review

Protest that awardee falsely certified that it will provide a domestic end product as required by the solicitation's Buy American Act clause and that it will not incorporate required jewel bearings in its product is dismissed because the questions whether the awardee will provide a domestic end product, as it certified in its offer, or comply with the jewel bearings requirement, are matters of contract administration and are not for consideration under the General Accounting Office's bid protest function.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties
- ■ ■ Direct interest standards

Protester does not have the direct economic interest to be considered an interested party to protest either the reasonableness of the cost-technical tradeoff or the cost reasonableness of the awardee's proposal where the protester would not be next in line for award if either protest issue were sustained.

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Inclusion
- ■ ■ ■ Administrative discretion

Where contracting agency determines that second low cost proposal had a reasonable chance for contract award, contracting agency reasonably included the proposal within the competitive range even if the proposal had some deficiencies.

Procurement

Bid Protests**■ GAO procedures****■ ■ Purposes****■ ■ ■ Competition enhancement**

General Accounting Office (GAO) will not review protest that government should procure items from a particular firm on a sole-source basis because the objective of GAO's bid protest function is to ensure full and open competition for government contracts.

Procurement

Bid Protests**■ GAO procedures****■ ■ Interested parties**

Fourth low offeror is not an interested party to question low firm's eligibility for award since it would not be in line for award even if the issue were resolved in its favor.

Procurement

Bid Protests**■ GAO procedures****■ ■ Protest timeliness****■ ■ ■ 10-day rule**

Protests that agency improperly canceled two requests for quotations instead of awarding contracts to the firm are dismissed as untimely where protester did not file protests until more than 10 days after being apprised of cancellations.

Procurement

Sealed Bidding**■ Unbalanced bids****■ ■ Materiality****■ ■ ■ Responsiveness**

Protest that bid is unbalanced because it contains decreasing option year prices is dismissed where bid does not contain corresponding overstated charges and therefore is not unbalanced; protest of unreasonably low prices is essentially a matter of bidder responsibility which General Accounting Office generally does not review.

Procurement

Bid Protests**■ Forum election****■ ■ Finality**

Procurement

Bid Protests**■ GAO authority**

After protests to the General Services Administration Board of Contract Appeals (GSCBA) have been dismissed or denied, there is no impediment to assumption of jurisdiction by the General Accounting Office (GAO) of a timely protest, by a firm that was not a party before the GSCBA; of the same procurement when the issues raised in the GAO protest were never considered by the GSCBA.

Procurement

Competitive Negotiation**■ Best/final offers****■ ■ Rejection****■ ■ ■ Ambiguous offers**

Agency properly rejected protester's best and final offer which was ambiguous with regard to whether the contractor would pay for shipping of warranty repair items when solicitation warranty provision makes warranty shipment costs the contractor's responsibility.

Procurement

Bid Protests**■ GAO procedures****■ ■ Interested parties**

Technically unacceptable offeror is not an "interested party" under the General Accounting Office's Bid Protest Regulations to challenge the acceptability of awardee's proposal where there are other acceptable offers because, even if the protest were sustained, the protester would not be eligible for award.

Procurement

Specifications**■ Minimum needs standards****■ ■ Competitive restrictions****■ ■ ■ Justification****■ ■ ■ ■ Sufficiency**

Solicitation issued by the General Services Administration to meet the requirements of the Alternative Motor Fuels Act of 1988 may properly restrict competition for the supply of alternative fuel motor vehicles to original equipment manufacturers because the restriction is consistent with the requirements of the Act.

Procurement

Bid Protests

- GAO procedures
- ■ Interested parties

Protester that cannot comply with solicitation requirement that alternative fuel motor vehicles be supplied by original equipment manufacturers is not an interested party to challenge other solicitation provisions.

B-240071, October 16, 1990

90-2 CPD 295

Procurement

Sealed Bidding

- Invitations for bids
- ■ Post-bid opening cancellation
- ■ ■ Justification
- ■ ■ ■ Sufficiency

Cancellation of solicitation after bid opening is proper where agency reasonably concludes that the solicitation does not include significant additional requirements and that award under the solicitation would no longer meet the government's actual needs.

B-240119, October 16, 1990

90-2 CPD 296

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Administrative discretion

Protest that firm was improperly excluded from competitive range is denied where record shows that firm's proposal lacked adequate detail to demonstrate that offeror understood requirement and was capable of satisfactory performance. Fact that solicitation contained detailed specifications regarding contract requirements does not excuse firm's failure to present its proposed approach to satisfying solicitation's specific requirements.

B-240128, October 16, 1990

90-2 CPD 297

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Where solicitation provided that price and technical factors would be given equal weight in the evaluation, agency properly awarded a contract to higher-rated, higher-priced offeror where agency reasonably determined that superior technical rating of offeror was sufficiently significant to outweigh the cost difference.

Procurement

Contractor Qualification

- Responsibility
 - ■ Contracting officer findings
 - ■ ■ Negative determination
 - ■ ■ ■ Criteria
-

Procurement

Contractor Qualification

- Responsibility
- ■ Financial capacity
- ■ ■ Contractors

Where processing bank declined to accept high bidder's credit card for the amount of his bid deposit, protest that contracting officer improperly rejected bid as nonresponsive is sustained since (1) deficiency in credit balance pertains solely to bidder's responsibility and can therefore be cured any time prior to award; (2) despite credit deficiency, government's interests were never at risk since as part of its bid, the bidder had submitted a pre-approved bid bond which insured the government against all default by the bidder, even where the bidder's instrument of payment was in a non-guaranteed form such as a credit card; and (3) prior to award, the bidder promptly cured credit deficiency with cash.

Procurement

Sealed Bidding

- Bids
- ■ Modification
- ■ ■ Interpretation
- ■ ■ ■ Intent

Since property sales contemplate award being made on an item-by-item basis, where bidder sets forth in his bid deposit statement that his total contract price is "\$1,602" and that the amount of his bid deposit is "20% of Bid," subsequent facsimile modifications which contain the solicitation number, the word "modification", the date, the signature of the bidder, and a clear itemized list of new bids and corresponding bid prices reasonably can be construed to mean that the initial contract price of \$1,602 has been modified; under these circumstances, the \$1,602 figure does not limit the amount of bidder's deposit and contractor is entitled to award on all items for which he was high bidder.

Procurement

Socio-Economic Policies

- Preferred products/services
- ■ Domestic products
- ■ ■ Compliance

Protest that agency improperly relied upon awardee's Buy American Act certification in connection with firm's obligation to furnish domestic end products is denied where contracting officer had no information at time of award which would have led her to believe that awardee would not furnish domestic end products.

Procurement

Bid Protests

■ Non-prejudicial allegation

■ ■ GAO review

Protest that agency improperly waived solicitation requirement that product furnished have been formally announced for marketing purposes on or before the closing date for the submission of initial offers is denied where awardee's technically acceptable offer contained statement that product had been announced at time of closing, and agency had no reason to question statement.

Procurement

Bid Protests

■ Private disputes

■ ■ GAO review

Procurement

Contractor Qualification

■ Responsibility

■ ■ Contracting officer findings

■ ■ ■ Affirmative determination

■ ■ ■ ■ GAO review

Protest that firm is nonresponsible because it will allegedly manufacture a product which, for reasons of copyright infringement, it is enjoined from manufacturing is dismissed because: (1) General Accounting Office (GAO) does not review affirmative responsibility determinations except in limited circumstances not present in this case; and (2) in any event, a copyright dispute is essentially a private party dispute not for adjudication by GAO.

B-240768.2, October 16, 1990

90-2 CPD 300

Procurement

Bid Protests

■ Dismissal

■ ■ Definition

General Accounting Office's dismissal of protest without giving protester 10 working day period to comment on contracting agency memorandum requesting dismissal was proper because Bid Protest Regulations specifically provide for dismissal when propriety of dismissal becomes clear based upon information provided by the contracting agency.

Procurement

Bid Protests

■ GAO procedures

■ ■ Protest timeliness

■ ■ ■ 10-day rule

Protest that contracting agency improperly disregarded technical merit in awarding to low offeror was untimely filed when raised more than 10 working days after date basis of protest was known.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of protest, previously dismissed as untimely filed under Bid Protest Regulations, is denied where request only contains a new ground of protest not contained in the original submission and does not otherwise question the rationale for the dismissal of the original protest as untimely.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

Request for reconsideration of dismissal of protest as untimely filed is dismissed where protester does not allege that dismissal was in error.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Competition rights
- ■ ■ Contractors
- ■ ■ ■ Exclusion

Protest of agency's failure to furnish incumbent contractor with copy of solicitation is dismissed where protester has not alleged or shown that competition and reasonable prices were not obtained or that agency acted deliberately to exclude protester from the competition.

Procurement

Bid Protests

- GAO procedures
- ■ Protests timeliness
- ■ ■ Apparent solicitation improprieties

Protest of agency's failure to set procurement aside for small business is untimely where not filed until after bid opening.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of prior decision is denied where protester fails to present evidence of any error of fact or law in prior decision.

Procurement

Bid Protests

- Agency-level protests
- ■ Protest timeliness
- ■ ■ GAO review

Where the protester was in possession of a fact that would establish the timeliness of its protest to the General Accounting Office (GAO)—that is, that it had filed an earlier agency-level protest—but did not include this fact in its protest to GAO, dismissal of protest that was otherwise untimely on its face was proper.

Procurement

Noncompetitive Negotiation

- Contract awards
- ■ Sole sources
- ■ ■ Propriety

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Shipment modes

Where agency issued a competitive solicitation for jet fuel, but record shows that only one source currently is capable of delivering jet fuel by pipeline to two Air Force bases, agency in essence is conducting a noncompetitive procurement which must be justified in accordance with statutory requirements.

Procurement

Competitive Negotiation

- Requests for proposals
- ■ Terms
- ■ ■ Service contracts
- ■ ■ ■ Applicability

Procurement

Socio-Economic Policies

- Service contracts
- ■ Applicability

Protest is sustained where the procuring agency unreasonably disregarded the Department of Labor's determination that the Service Contract Act was applicable to the agency's procurement and in proceeding to receive proposals in the face of Labor's determination.

Procurement

Competitive Negotiation

- Unbalanced offers
- ■ Materiality
- ■ ■ Determination
- ■ ■ ■ Criteria

Low bid is not materially unbalanced, and thus not subject to rejection as being nonresponsive, where the contracting agency expects to exercise the option quantities, and the record contains no basis for concluding that low bidder would not offer the lowest ultimate cost to the government.

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Administrative discretion

Agency properly rejected protester's offer which did not contain a technical proposal, as required by the solicitation.

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ GAO review

Protest that required item does not meet Federal Acquisition Regulation (FAR) definition of "complex" item and therefore does not warrant imposition of high-level quality control requirement is denied where agency reasonably determined that item's quality characteristics are consistent with FAR definition, and that high-level quality control is necessary to meet its minimum needs.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Significant issue exemptions
- ■ ■ ■ Applicability

Untimely protest of a solicitation's evaluation scheme will not be considered under the significant issue exception to the General Accounting Office (GAO) timeliness requirements where the issue raised in the protest has been considered on the merits by GAO in prior decisions and resolution of the issue would not be of widespread interest to the procurement community but only to the protester in this procurement. GAO will no longer invoke the significant issue exception solely because the record shows a violation of statute or regulation. 68 Comp. Gen. 473 (1989), 66 Comp. Gen. 367 (1987), and 66 Comp. Gen. 31 (1986) will no longer be followed.

Procurement

Payment/Discharge

- Payment withholding
- ■ Prompt payment discounts
- ■ ■ Propriety

The Government Printing Office (GPO) was entitled to take prompt payment discounts on contract payments owed to Swanson Typesetting Service but paid to the Internal Revenue Service (IRS) pursuant to notice of levy even though actual transfer of funds to IRS did not occur until after contractual payment period for prompt payment discounts. GPO may not be deprived of its right to take prompt payment discounts where payment to contractor is withheld on account of an IRS levy notice.

Procurement

Payment/Discharge

- Payment priority
- ■ Payment procedures
- ■ ■ Set-off

Although IRS served notice of levy on GPO pursuant to 26 U.S.C. § 6331, we view such notice as an IRS request for GPO to set off amounts GPO owed its contractor. *U.S. for Use of P. J. Keating Co. v. Warren Corp.*, 805 F.2d 449, 452 (1st Cir. 1986). Thus, GPO properly transferred to IRS amounts owed the contractor, Swanson Typesetting Service, on invoices received both before and after receipt of the notice of levy.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Protest asserting that agency improperly failed to impose a cap on general and administrative overhead rates proposed by offerors, and failed to include other similar terms in the request for proposals, is dismissed as untimely since under the General Accounting Office Bid Protest Regulations such challenges must be filed prior to receipt of initial proposals.

Procurement

Competitive Negotiation

- Offers
- ■ Cost realism
- ■ ■ Evaluation
- ■ ■ ■ Administrative discretion

Challenge to agency's review of awardee's cost realism is denied where record shows that the cost realism review was reasonable based on consideration of the offerors' cost and pricing data, a Defense Contract Audit Agency audit, and the Source Selection Board's technical evaluation.

Procurement

Bid Protests

- Non-prejudicial allegation
- ■ GAO review

Assertion that agency acted improperly in deleting from awardee's contract certain clauses included in the solicitation is denied where the clauses were later properly found to be inapplicable or not required.

B-240204, October 18, 1990

90-2 CPD 312

Procurement

Competitive Negotiation

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Agency reasonably selected technically superior, higher priced proposal for mechanical site preparation contract where the agency found the awardee's strengths in personnel, equipment, proposed performance, and superior quality control would provide greatest assurance that all the work contemplated under the contract would be completed within the limited time span allotted for performance and, thus, the award would be the most advantageous to the government.

B-240289, October 18, 1990

90-2 CPD 313

Procurement

Contractor Qualification

- Responsibility criteria
- ■ Performance capabilities

Solicitation provision requiring that bidders certify that they have been "regularly engaged in airfield pavement work for the three years immediately preceding" their bid, and requiring that bidders submit a list of contracts for airfield pavement work completed within the "past three years," provides specific quantitative qualifications establishing definitive responsibility criteria.

Procurement

Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Affirmative determination
- ■ ■ ■ GAO review

Protest that proposed awardee does not meet definitive responsibility criteria in solicitation requiring experience in airfield pavement work is sustained since the proposed awardee provided no objective evidence upon which the contracting officer could reasonably determine that it satisfied the experience requirement.

Procurement

Small Purchase Method

- Quotations
- ■ Descriptive literature
- ■ ■ Adequacy

Contracting agency properly may use manufacturer's part number and national stock number as an item description under a procurement of relatively simple and common items conducted through small purchase procedures where such identification adequately conveys the agency's needs.

Procurement

Bid Protests

- Agency-level protests
- ■ Protest timeliness
- ■ ■ GAO review

Protest is dismissed as untimely where initial agency-level protest against solicitation specification was filed a month after the closing date for receipt of initial proposals.

Procurement

Competitive Negotiation

- Competitive advantage
- ■ Conflicts of interest
- ■ ■ Post-employment restrictions
- ■ ■ ■ Allegation substantiation

Procurement

Contract Management

- Contract administration
- ■ Convenience termination
- ■ ■ Competitive system integrity

Agency properly terminated the contract of firm and disqualified firm from further participation in the procurement where agency reasonably concluded that telephone calls made by a former government official whose duties included the procurement, on behalf of the awardee, to various government officials involved in award decision, while award was pending, could be construed as possibly violating the restrictions of 18 U.S.C. §§ 203, 205 and 207 (1988) and created appearance of impropriety detrimental to the competitive system.

Procurement

Special Procurement Methods/Categories

- Lease/purchase options
- ■ Use

Customs, using its authority to procure a lease, may exercise its purchase option to leased aircraft through a direct purchase, by use of the agency of or, alternatively, through an assignment to a third party leasing firm supplying its own funds, for the purpose of obtaining a new lease from the leasing firm at a reduced rate and with other favorable lease terms. This procedure, a third party

leaseback, is not subject to the laws governing the disposal of government property as long as the government obtains more favorable terms under the new lease.

B-240016, October 19, 1990

90-2 CPD 317

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Evaluation criteria
- ■ ■ ■ Application

Protest is sustained where agency evaluation gave greater weight to technical factors than was reasonably consistent with the solicitation evaluation criteria by using a scoring formula which accorded less than 10 percent to price, and more than 90 percent to technical, and effectively failed to consider protester's low fixed price as a significant evaluation factor.

Procurement

Competitive Negotiation

- Contract awards
- ■ Initial-offer awards
- ■ ■ Propriety

Protest is sustained where agency made award to other than the low priced, technically acceptable offeror on the basis of initial proposals without discussions.

B-240052, October 19, 1990

90-2 CPD 318

Procurement

Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Affirmative determination
- ■ ■ ■ GAO review

Protest that awardee incorrectly listed and certified its place of performance concerns a matter of responsibility. The General Accounting Office will not review the contracting officer's affirmative determination of responsibility absent a showing of possible bad faith or fraud or misapplication of definitive responsibility criteria.

Procurement

Special Procurement Methods/Categories

- Federal supply schedule
- ■ Multiple/aggregate awards
- ■ ■ Price reasonableness

Agency reasonably found awardee offered its most favored customer price on Federal Supply Schedule Contract.

Procurement

Special Procurement Methods/Categories**■ Requirements contracts****■ ■ Validity****■ ■ ■ Determination**

Solicitation for natural gas from wellhead producers and its transmission via the interstate pipeline to local distributing companies reasonably was found not to be a contract for utility services within the meaning of the Department of Labor's regulatory exemption from the application of the Walsh-Healey Act and thus the Walsh-Healey Act is applicable to the procurement.

Procurement

Socio-Economic Policies**■ Small businesses****■ Disadvantaged business set-asides****■ ■ Eligibility****■ ■ ■ Determination**

Procuring agency properly did not set aside procurement for small disadvantaged business (SDB) concerns where the agency determined that there was no expectation of receiving offers from two or more SDBs which would be eligible for award as manufacturers/producers or regular dealers as required by the Walsh-Healey Act.

Procurement

Bid Protests**■ GAO procedures****■ ■ Protest timeliness****■ ■ ■ 10-day rule**

Prior dismissal for untimeliness is affirmed where the initial protest was filed more than 10 working days after the contracting agency denied agency-level protest; protester's continued pursuit of the protest with the agency does not toll timeliness requirements.

Procurement

Bid Protests**■ GAO procedures****■ ■ Protest timeliness****■ ■ ■ 10-day rule**

Protests that agency improperly canceled solicitations are dismissed as untimely where protester filed agency-level protests more than 10 working days after the protester was notified about cancellations of the solicitations.

B-238452.3, October 22, 1990

90-2 CPD 322

Procurement

Bid Protests

- GAO procedures
 - ■ Preparation costs
-

Procurement

Competitive Negotiation

- Offers
 - ■ Preparation costs
-

Successful protesters are entitled to protest costs even where their protests are sustained (based on the General Accounting Office's *in camera* review of evaluation documents) on ground which was not argued by the protesters.

B-240045, October 22, 1990

90-2 CPD 323

Procurement

Competitive Negotiation

- Offers
 - ■ Evaluation
 - ■ ■ Technical acceptability
-

Where request for proposals provides for award to lowest-priced offeror, contracting agency properly awarded to low offeror where agency reasonably determined that proposal and descriptive literature submitted by offeror established that its proposed equipment conformed to the agency's technical requirements.

B-241036.2, October 22, 1990

Procurement

Bid Protests

- GAO procedures
 - ■ GAO decisions
 - ■ ■ Reconsideration
-

Dismissal of protest is affirmed where the protest against the specifications was filed at the agency with the protester's bid, since such protests must be filed prior to bid opening.

B-241416, October 22, 1990

Procurement

Socio-Economic Policies

- Small businesses
 - ■ Disadvantaged business set-asides
 - ■ ■ Preferences
 - ■ ■ ■ Eligibility
-

Small disadvantaged business (SDB) dealer that proposed to supply end items manufactured by a large business is not entitled to solicitation's SDB evaluation preference.

Procurement

Bid Protests

- GAO procedures
 - ■ Protest timeliness
 - ■ ■ 10-day rule
-

Procurement

Sealed Bidding

- Unbalanced bids
 - ■ Materiality
 - ■ ■ Responsiveness
-

Protest that awardee's bid should be rejected as materially unbalanced was timely filed under Bid Protest Regulations, where it was filed within 10 working days of receipt of the agency's report on a prior protest; and the protester first became aware, from reading the report, of the agency's post bid opening acceptance of a breakdown of the awardee's lump-sum bid for the line items specified in the invitation for bids, which was then incorporated into the awardee's contract.

Procurement

Sealed Bidding

- Unbalanced bids
 - ■ Materiality
 - ■ ■ Responsiveness
-

Protest that a bid must be rejected as materially unbalanced is denied where: (1) there is no possibility that an award on the basis of the bid will not result in the lowest cost to the government, and (2) the bid is not so grossly unbalanced as to constitute an improper advanced payment or interest-free loan.

Procurement

Bid Protests

- GAO procedures
 - ■ Protest timeliness
 - ■ ■ Apparent solicitation improprieties
-

Protest of solicitation provision limiting the number of pages in technical proposal, and of failure to partially set aside procurement for small business concerns, not raised prior to the time for receipt of initial proposals, is untimely.

Procurement

Competitive Negotiation

- Offers
 - ■ Competitive ranges
 - ■ ■ Exclusion
 - ■ ■ ■ Administrative discretion
-

Protester was properly excluded from the competitive range where the agency had a reasonable basis for its determination that the offeror's proposal was so deficient in various technical areas as to require major revision in order to be considered technically acceptable.

Procurement

Socio-Economic Policies

- Small businesses 8(a) subcontracting
- ■ Incumbent contractors
- ■ ■ Adverse effects
- ■ ■ ■ Determination

Prior to accepting requirement which previously was set aside for small business into 8(a) program, Small Business Administration (SBA) is required by regulation to determine adverse impact of acceptance on small business concerns based on most recent gross sales. Where SBA fails to consider most recent financial information showing sales information in finding no adverse impact on small business in violation of this regulation, protest is sustained.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Procurement.

Socio-Economic Policies

- Preferred products/services
- ■ American Indians

Protest after bid opening that solicitation was improperly restricted to Indian-owned firms pursuant to the Buy Indian Act is dismissed as untimely where set-aside status was clearly stated on cover sheet of the solicitation and was included in the *Commerce Business Daily* notice of the procurement.

Procurement

Socio-Economic Policies

- Disadvantaged business set-asides
- ■ Use
- ■ ■ Administrative discretion

Department of Defense's objective of awarding 5 percent of the dollar value of its contracts to small disadvantaged business concerns is a goal, not a cap or ceiling which cannot be exceeded.

Procurement

Sealed Bidding

- Unbalanced bids
- ■ Allegation substantiation
- ■ ■ Evidence sufficiency

Protest that bid is unbalanced because it offers certain items at less than cost is dismissed where protester does not allege that bid also contained overstated charges.

B-234217, October 25, 1990

Procurement

Payment/Discharge

- Shipment costs
- ■ Overcharge
- ■ ■ Payment deductions
- ■ ■ ■ Propriety

Where carrier's Freight All Kinds (FAK) tender specifies that, except for the noted commodities, rates and minimum charges will be based on the rates and minimum charges set out in referenced bureau class rate tariffs, the carrier cannot except additional commodities from the FAK rating scheme by revising carrier-issued documents also incorporated by reference; instead, and in accordance with the tender's own terms, the carrier can add further exceptions only by amending the tender itself.

B-240186, October 25, 1990

90-2 CPD 330**Procurement**

Specifications

- Minimum needs standards
- ■ Determination
- ■ ■ Administrative discretion

An agency's requirement for a 16,000 pound tensile test to measure the tensile strength of scaffolding couplers is unobjectionable where the agency has found that the couplers safely support the scaffolding if they can pass that test; the fact that the protester desires a more restrictive test does not render the agency's determination unreasonable.

B-240443.3, October 25, 1990

90-2 CPD 331**Procurement**

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of prior decision is denied where protester does not establish any factual or legal errors in the prior decision.

B-240856, B-240857, October 25, 1990

Procurement

Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Notification

Protester's contention that amendments to two solicitations did not adequately place potential bidders on notice of the changed bid opening dates for both solicitations does not state a valid basis of protest where change in bid opening date in each solicitation amendment was clearly and reasonably apparent to any prudent bidder.

Procurement

Bid Protests

- Private disputes
- ■ GAO review

Protest of conduct of protester's former employee, who left protester's firm and accepted employment with awardee firm during the competitive process, is essentially a dispute between private parties which is outside the scope of General Accounting Office's bid protest function.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Protest that solicitation should have been set aside for small disadvantaged businesses filed after bid opening is untimely since solicitation indicated it was issued on an unrestricted basis and protests concerning alleged improprieties in a solicitation must be filed prior to bid opening.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Good cause exemptions
- ■ ■ ■ Applicability

Untimely protest will not be considered pursuant to the "good cause" exception where protester does not demonstrate that some compelling reason beyond its control prevented it from filing a timely protest.

Procurement

Socio-Economic Policies

- Small business set-asides
- ■ Use
- ■ ■ Administrative discretion

Where Small Business Administration regional office determines that no small business offers were received under a small business set-aside, the proper procedure is for the agency to withdraw the set-aside and resolicit on an unrestricted basis rather than award to large business offeror.

Procurement

Specifications

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Performance specifications
- ■ ■ ■ Overstatement

Protest that agency relaxed a solicitation requirement that proposed staff have at least 2 years programming experience using a certain specified type of data base management system by accepting an offer proposing a staff with different data base management system experience is sustained, where record shows that requirement was mandatory. Since the agency found the different experience acceptable and transition to performance by firm not meeting requirement is being achieved without problems, the experience requirement exceeded the agency's minimum needs and may have unduly restricted competition. The General Accounting Office therefore recommends that the agency resolicit, requiring only the experience necessary for performance.

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Administrative discretion

Agency properly rejected protester's proposal from the competitive range as technically unacceptable where the proposal did not contain sufficient information to allow the agency to determine whether the solicitation's technical requirements had been met.

Procurement

Competitive Negotiation

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Administrative discretion

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Proposal that agency properly finds technically unacceptable may be excluded from the competitive range without consideration of price.

Procurement

Competitive Negotiation

- Discussion
- ■ Determination criteria

Contracting agency is not required to conduct discussions with offerors of proposals determined to be technically unacceptable.

Procurement

Competitive Negotiation**■ Offers****■ ■ Evaluation errors****■ ■ ■ Evaluation criteria****■ ■ ■ ■ Application**

Contention that agency improperly evaluated protester's technical proposal is denied where record indicates that agency evaluation was reasonable and in accordance with stated evaluation criteria, and where protester fails to rebut or reply to any of the agency's detailed responses to the evaluation challenge.

Procurement

Competitive Negotiation**■ Competitive advantage****■ ■ Non-prejudicial allegation**

Contention that awardee had unfair competitive advantage due to experience gained by its subcontractor is untimely when raised more than 4 months after agency responded to protester's initial complaint on this basis by providing designs and drawings intended to eliminate any improper competitive advantage enjoyed by the subcontractor.

Procurement

Competitive Negotiation**■ Discussion****■ ■ Adequacy****■ ■ ■ Criteria**

Protest alleging that agency failed to conduct meaningful discussions is untimely when first raised after receipt of the agency report where the agency provided a preaward debriefing to protester indicating the major weaknesses in its proposal and the protester had all the information it needed to include this argument in its initial timely protest filed after the debriefing.

Procurement

Competitive Negotiation**■ Offers****■ ■ Competitive ranges****■ ■ ■ Exclusion****■ ■ ■ ■ Administrative discretion**

Protest that agency improperly excluded protester's proposal from the competitive range is denied where the agency reasonably found that the proposal was deficient under each evaluation factor.

Procurement

Sealed Bidding

- Invitations for bids
- ■ Evaluation criteria
- ■ ■ Unit prices
- ■ ■ ■ Size standards

Invitation for bids (IFB) required bids for thermal insulation sheets based on a unit price per sheet and bidders could provide sheets in a range of sizes at the stated unit price. Protest that bidder offered the lowest price on a square footage basis, rather than on a per sheet basis, is denied because such an evaluation would be inconsistent with the IFB.

Procurement

Noncompetitive Negotiation

- Contract awards
- ■ Sole sources
- ■ ■ Propriety

Where agency does not possess or have rights in the technical data necessary for a competitive procurement of repair services for battery charger/analyzers, and protester has not shown that performance could be accomplished only with the data available to it, agency has proper basis for finding protester unacceptable and proceeding with a sole-source procurement of the services from the original manufacturer, which has full technical data on the items.

Procurement

Bid Protests

- Premature allegation
- ■ GAO review

Protest that proposed solicitation, which is presently under agency review, should be a small business set-aside and for a term of 1 year is dismissed as premature.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

Contention that protester was improperly excluded from competitive range is untimely when filed more than 10 days after receipt of competitive range notice from the agency.

Procurement

Sealed Bidding**■ Bids****■ ■ Responsiveness****■ ■ ■ Ambiguous prices**

Bid was properly rejected where its total price was low but the sum of all the priced line items was not low. A bid must be rejected where it is susceptible of being interpreted as offering either of two prices and only one price is low.

Procurement

Bid Protests**■ GAO procedures****■ ■ GAO decisions****■ ■ ■ Reconsideration**

General Accounting Office will not consider new arguments raised by agency in a request for reconsideration where those arguments are derived from information available during initial consideration of the protest but not argued, or from information available but not submitted during initial protest, since parties that withhold or fail to submit all relevant evidence, information, or analyses do so at their own peril.

Procurement

Bid Protests**■ GAO procedures****■ ■ GAO decisions****■ ■ ■ Reconsideration**

Repetition of arguments previously made and mere disagreement with prior decision do not provide bases for reconsideration of a decision.

Procurement

Competitive Negotiation**■ Offers****■ ■ Competitive ranges****■ ■ ■ Exclusion****■ ■ ■ ■ Administrative discretion**

Protest challenging contracting agency's evaluation of protester's proposal and exclusion of the proposal from the competitive range is denied where a review of the agency's evaluation shows that it was conducted in accordance with the solicitation's evaluation criteria and that the agency's conclusion to exclude the proposal was reasonable, notwithstanding the protester's allegation that the evaluation result was unwarranted and made in bad faith.

Procurement

Bid Protests

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Where an interested party was on notice of the protest, but did not choose to file any comments with regard to the issues raised therein, that party is not eligible to request reconsideration.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Wage rates

Agency treated offerors equally with regard to use of Department of Labor area wage determination rates where the request for proposals was not misleading as to wage rates, similar cost questions were posed to offerors during discussions, and both offerors had an opportunity to respond.

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Non-prejudicial allegation

Discrepancy in wage rates proposed in awardee's technical and cost proposals does not warrant disturbing award where there is no evidence in the record of fraud or deliberate misrepresentation and the amount of the discrepancy is extremely small with respect to the difference between the proposals of the awardee and the next low offeror, so that no prejudice will result to the latter.

Procurement

Competitive Negotiation

- Offers
- ■ Cost realism
- ■ ■ Evaluation
- ■ ■ ■ Administrative discretion

Agency cost realism analysis had a reasonable basis where the agency reviewed awardee's response to agency cost discussions; verified labor categories, hours proposed, labor and burden rates; and verified other costs with the Defense Contract Audit Agency.

Procurement

Competitive Negotiation

- Offers
- ■ Cost realism
- ■ ■ Evaluation
- ■ ■ ■ Administrative discretion

Agency cost realism analysis was proper where agency accepted awardee's supplying of facility at no cost and ceiling on general and administrative rates and employee health and welfare benefits, since, under the contract awarded, the firm waived its rights to recover costs above the caps

throughout the life of the contract and agreed that these costs would not be allocated to any other government contracts.

Procurement

Competitive Negotiation

■ Offers

■ ■ Evaluation

■ ■ ■ Technical acceptability

Agency properly conducted technical evaluation of a proposal which offered minimum area wage determination rates where the solicitation mandated a reduction in technical score only if such rates were found to be unrealistic.

B-240180, October 30, 1990

90-2 CPD 349

Procurement

Contractor Qualification

■ Responsibility

■ ■ Contracting officer findings

■ ■ ■ Negative determination

■ ■ ■ ■ Pre-award surveys

A contracting officer's determination that a paint contractor was nonresponsible was reasonably based upon a negative pre-award survey, which showed that the contractor's prior performance on four recent similar contracts had been unsatisfactory, and file documentation indicating late performance and delivery of nonconforming paint; the contracting officer had no duty, under the circumstances, to conduct an independent investigation for the purpose of substantiating the accuracy of the pre-award survey, notwithstanding that some of the alleged deficiencies had been disputed by the contractor.

Procurement

Contractor Qualification

■ Responsibility

■ ■ Contracting officer findings

■ ■ ■ Negative determination

■ ■ ■ ■ Prior contract performance

A contracting officer's determination that a paint contractor was nonresponsible was reasonably based upon a negative pre-award survey, which showed that the contractor's prior performance on four recent similar contracts had been unsatisfactory, and file documentation indicating late performance and delivery of nonconforming paint; the contracting officer had no duty, under the circumstances, to conduct an independent investigation for the purpose of substantiating the accuracy of the pre-award survey, notwithstanding that some of the alleged deficiencies had been disputed by the contractor.

B-240301, October 30, 1990

Procurement

Sealed Bidding

■ Bids

■ ■ Late submission

■ ■ ■ Rejection

■ ■ ■ ■ Propriety

Where bidder sent bid by U.S. Postal Service Express Mail only 1 working day before bid opening; bid arrived at government installation only approximately 6 hours before bid opening; and instal-

lation's normal mail delivery procedures would not have assured timely delivery to bid opening room, reason for late receipt of bid in bid opening room was bidder's failure to allow sufficient time for delivery, not government mishandling; accordingly, the bid was properly rejected as late.

Procurement

Sealed Bidding

- Bids
- ■ Late submission
- ■ ■ Rejection
- ■ ■ ■ Propriety

Late bid may not be considered on ground that agency failed to respond to protester's inquiry confirming whether agency received its bid before bid opening; agency does not have a duty to inform protester about arrival of its bid.

Procurement

Bid Protests

- Competition
- ■ Adequacy

Competition was adequate, even where only one bid is timely received, where there is no evidence or allegation that the bid price was unreasonable, since all interested firms had opportunity to compete, and bid was submitted under threat of competition.

B-240798, October 30, 1990

90-2 CPD 350

Procurement

Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Affirmative determination
- ■ ■ ■ GAO review

Where invitation for bids for physician services required submission of physician qualifications with bid, allegation that low bidder is nonresponsible because it substituted proposed physicians with incumbent contractor's employees prior to award amounts to challenge against contracting officer's affirmative determination of responsibility, which General Accounting Office will not consider absent specific allegations not present here.

Procurement

Bid Protests

- Antitrust matters
- ■ GAO review

Allegation of collusive bidding is a matter for the Justice Department, and will not be considered by the General Accounting Office under its bid protest function.

Procurement

Socio-Economic Policies

- Small businesses
- ■ Suppliers
- ■ ■ Acceptability

Protests that firm with small business, small purchase Blanket Purchasing Agreement (BPA) is supplying bakery items from large business bakery is denied as the regulations permit small business holder of such a BPA to supply any domestically produced or manufactured item.

Procurement

Sealed Bidding

- Bids
- ■ Responsiveness
- ■ ■ Acceptance time periods
- ■ ■ ■ Deviation

Failure to submit solicitation page containing "Minimum Bid Acceptance Period" clause does not render bid nonresponsive where bidder indicates on Standard Form 33 that it is offering the same minimum bid acceptance period required by omitted clause.

Procurement

Competitive Negotiation

- Contract awards
- ■ Propriety

Allegation that agency awarded lease at a rental in excess of the estimate in a statutorily required prospectus approved by a congressional committee is denied where the actual rental amount under the award is within prospectus ceiling, as escalated by statutorily permitted inflation factor.

Procurement

Competitive Negotiation

- Discussion
- ■ Misleading information
- ■ ■ Allegation substantiation

Specific and deliberate agency advice to protester during negotiations that award ceiling would include "specials," where agency intended to and did exclude such specials in order to determine that the awardee's offer was within the ceiling, was misleading and improper.

Procurement

Contractor Qualification

- Responsibility
- ■ Financial capacity
- ■ ■ Contractors

Agency unreasonably downgraded protester under offeror qualifications criterion, the most important technical evaluation factor, where the protester was evaluated as marginal substantially on the basis of a financial report concerning an entity which was not a part of the offeror's limited partnership or of its proposed team.

Procurement

Bid Protests

- GAO procedures
 - ■ Preparation costs
 - ■ ■ Attorney fees
-

Procurement

Competitive Negotiation

- Offers
- ■ Preparation costs

Where contracting agency improperly awarded a lease, but cancellation is not possible during the base period because the lease does not contain a termination for convenience clause, the protester is entitled to the costs of proposal preparation and of filing and pursuing its protest.

B-240029.2, et al., October 31, 1990

90-2 CPD 354

Procurement

Contractor Qualification

- Organizational conflicts of interest
- ■ Allegation substantiation
- ■ ■ Evidence sufficiency

Protest that a member of contracting agency's evaluation panel had an employment arrangement with the eventual awardee and was biased against the protester is denied where, based on evidence in record, including sworn affidavits and testimony at hearing on the record, and based on General Accounting Office's (GAO) judgment as to the credibility of testimony, GAO decides that record does not include clear evidence of bias or a conflict of interest.

Procurement

Competitive Negotiation

- Best/final offers
 - ■ Evaluation
 - ■ ■ Point ratings
 - ■ ■ ■ Propriety
-

Procurement

Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Downgrading
- ■ ■ ■ Propriety

Agency evaluation and scoring of best and final offer (BAFO) that resulted in a deduction of points from protester's score was deficient where evaluators unreasonably concluded that protester had not offered required number of hours since evaluators reached that conclusion by relying on staff hour analysis that was designated in best and final offer as "superseded" and ignored other sections of BAFO that set out correct staff hours.

Procurement

Competitive Negotiation

- Discussion
- ■ Adequacy
- ■ ■ Criteria

Contracting agency failed to conduct meaningful discussions with offeror where, prior to submission of best and final offers, agency evaluators were concerned about soon-to-be-retired active duty military personnel proposed by offeror but failed to raise the matter in discussions.

B-240203, October 31, 1990

90-2 CPD 361

Procurement

Small Purchase Method

- Quotations
- ■ Evaluation
- ■ ■ Technical acceptability
- ■ ■ ■ Tests

Agency reasonably rejected the protester's quote on a small purchase request for quotations where the quote took exception to the conditions of the first article testing requirement.

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

Protest that the awardee offered its own part number, instead of a requested part number, in a small purchase request for quotations, is timely filed within 10 working days of the receipt of the agency report, from which the protester was first apprised of the contents of the awardee's quote, since the protest was initially filed within 10 working days of being apprised of the award, and the protester had no further duty to obtain, under the Freedom of Information Act, a copy of the awardee's quote, since this information was to be supplied with the agency report on the protest.

Procurement

Specifications

- Brand name specifications
- ■ Equivalent products
- ■ ■ Acceptance criteria

Agency may accept a quote under small purchase procedures from an approved source who identifies the part by a manufacturer's part number, as requested by the request for quotations, where this is the part number of the part previously delivered by this source.

B-240327, October 31, 1990

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

Protest of agency rejection of protester's response to agency's *Commerce Business Daily* notice of its intent to place a sole-source purchase order against a Federal Supply Schedule contract is timely where protester (1) responded to notice within required 30-day time limit, (2) filed an

agency-level protest within 10 working days of receiving notice of its rejection as technically unacceptable, and (3) thereafter filed a protest at the General Accounting Office within 10 working days of its receipt of the denial of its agency-level protest.

Procurement

Noncompetitive Negotiation

- **Contract awards**
- ■ **Sole sources**
- ■ ■ **Justification**
- ■ ■ ■ **Procedural defects**

Contracting agency has not justified the sole-source purchase of computer equipment and peripherals where: (1) it rejected as technically unacceptable the protester's offer of equivalent equipment, even though the protester submitted evidence that the offered equipment was completely compatible and the agency gives no specific reasons why the protester's equipment is not compatible; and (2) the agency stated that it would consider equivalent equipment upon expiration of the agency's underlying computer system warranty, which expired shortly after award.

B-240856.2, October 31, 1990

90-2 CPD 378

Procurement

Sealed Bidding

- **Invitations for bids**
- ■ **Amendments**
- ■ ■ **Notification**

Protester's contention that an amendment to a solicitation did not adequately place potential bidders on notice of the changed bid opening date for the solicitation does not state a valid basis of protest where the change in the bid opening date was clearly and reasonably apparent to any prudent bidder.

B-241031.3, October 31, 1990

90-2 CPD 355

Procurement

Bid Protests

- **GAO procedures**
- ■ **GAO decisions**
- ■ ■ **Reconsideration**

Request for reconsideration is dismissed where the issue was considered and denied in an earlier protest involving the same parties.

B-241536, October 31, 1990

Procurement

Contractor Qualification

- **Organizational conflicts of interest**
- ■ **Allegation substantiation**
- ■ ■ **Evidence sufficiency**

Protest alleging conflict of interest involving agency consultant and awardee firm is dismissed where allegations do not establish likelihood that awardee's alleged prospective employment of consultant improperly influenced evaluation and award.

B-241660, October 31, 1990

Procurement

Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

Protest of cancellation of portion of solicitation is untimely where filed more than 10 days after protester learned of cancellation.

Procurement

Bid Protests

- Moot allegation
- ■ GAO review

Protest of agency's treatment of protester during procurement is academic where agency canceled the only portion of requirement for which protester was competing.

B-241683, October 31, 1990

90-2 CPD 362

Procurement

Bid Protests

- Dismissal
- ■ Definition

Protest is dismissed for failure to state a valid basis of protest where protester does not allege that rejection of offer as technically unacceptable was unreasonable or that award otherwise was improper.

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